1944. **File No.** Abk Licenses II/44

Legal Deptt

B **BRANCH**

Subject:— Licenses under the Bombay Abkari Act 187

E 16/1944

File No Abk Licenses II/44

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141-B

Office of the R.L.A.

The draft license at pp. 63-72 ante, as amended, is in order.

2. Condition 12 at p. 67:- It appears from the preamble of the license (p. 63) and condition 23 (p. 71) that the licence is not for the cafe but fot the sale of liquor in a portion of the Cafe set aparet for the purpose. The amendment suggested by R.D. to clause 12 is not suitable. The portion beginning with 'except' to the end may be replaced by a fresh para. as shown in pencil at p. 67.

Id/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 796, dated the 29th January 1944.

EVY. 16/7.

Office of the R.L.A.

The view at A on page 17 in Secretary R.D.'s note is correct.

2. It is not necessary to insert any condition in the license as proposed at B on page 17 of Secretary, R.D.'s note. Irrespective of any such condition, recourse can be had to section 32A of the Bombay Abkari Act, 1878 (subject to which the license is granted), and the authority granting the license may cancel the license inter alia when the licensee or his agent or servant incurs a conviction under the Profiteering Ordinance or other specified laws. The authority granting the license may be suitably directed in this regard though executive instructions issued by the Provincial Government under clauses (1) and (k) of section 64A of the Act.

Id/- P.N.M.
14/2/44.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1193, dated the 14th February 1944.

EVY. 16/7.

Office of the R.L.A.

The draft license at pages 135-136A as amended, is in order.

2. Condition 3 of the license is amended in view of condition 2 thereof read with rule 16 of the Bombay Foreign Liquor Bottling Rules, 1944, at page 122 ante.

Id/- P.N.M.
23-3-44.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2185, dated the 23rd March 1944.

EVY. 16/7.

Office of the R.L.A.

Subject to the following remarks, the draft licenses at slip I below, as amended, are in order.

(a) The preambles of the two draft licenses have been revised on the lines of those recently settled by the R.L.A.

(b) Condition 4:- In view of the provisions of section 47 and 32 (1)(b) (read with condition 22 of License I and 32 of LicenseII) of the Bombay Abkari Act, 1878, the provisions regarding the licensee being responsible for the acts of his agent or servant etc. as if they were his own acts etc. has been deleted from Condition 4 of the R.D. draft.

(c) Since the license is sought to be granted for the first time to one Mr. Contracto/Condition 5 in the first license and Condition 9 in the second license are unnecessary and have been ommitted. Similarly, Conditions 10 and 12 (as renumbered) of the first license and Conditions 17 and 19 (as renumbered) of the second license have been amended by omitting reference to outgoing licensee etc.

(d) Condition 18 of the R.D. dract license No. 1 and Condition 28 of the draft license No. II, have been split up into two conditions according to the recent drafts settled by the R.L.A.

(e) Section 17A of the Bombay Abkari Act, 1878, provides that no licensed vendor shall sell or deliver any intoxicant to any person apparently under the age of fourteen years whet herfore consumption by such person or by any other person and whether for comsupmtion on or off the premises of such licensed vendor. Condition 23 of R.D. draft license No. II, renumbered as Condition 22, however provides that the licensees shall not sell or give Mahura Spirit to persons under 16 years of age. The Condition prohibiting sale or delivery of Mahura\Spirit to persons under 16 years of age is apparently inconsistent with the provisions of section 17A and has therefore been amended so as to bring it in accord wi with those provisions.

P.T.O.

Sd/- P.N.M.
5/4/44.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2618, dated the 6th March 1944.

EVI. 16/7.

Office of the R.L.A.

Para. 2 (1) of R.D. note at page 156 ante:- The condition for which the words were exercised dealt only with purchase by licensees. It is not clear how the retention of the words in this condition will make clear the extent of sale to the public. However if R.D. wants the words they may be inserted.

2. Para 2(2) of the R.D. note at page 156 ante:- The requisite provision has been made in condition 4 of form D.A. 34-A at p. 108 ante.

3. Para 2(3) and (4) of R.D. note at page 156 ante:- (a) The word 'not' has been duly inserted in condition 1(a) of form D.A. 78 p. 125.

(b) Form D.A. 86 at p. 141 ante: Condition 2 may be amended by adding the following at the end, namely:-

"The permit-holder shall get the ~~quantity~~ quantity of liquor purchased by him from time to time entered in the form specified on the reverse of the permit".

The form at page 88 ante has been duly inserted at the end of the form at page 142 ante.

4. Revised draft licenses are sent herewith.

5. Form D.A. 2:- (a) (i) The preamble of this license and of all other licenses has been revised on the lines of the draft licenses furnished to the R.D. with R.L.A's No. 2012 dated 18th March 1943 at page 105

ante.

(ii) Clauses (a) and (b) of condition 2 in the R.D. draft have been transposed in the preamble of the revised draft in order to show the nature of the spirits which the licensee is authorized to sell.

(iii) Clause (a) of condition 2 of the R.D. draft provides that the license extends only to the sale of spirit which has been rendered unfit for human consumption by the addition of light caoutchoucine and pyridine bases in accordance with the rules prescribed on the subject. In this connection the attention of R.D. is drawn to the R.L.A.'s No. 8763 dated 27-11-1943. From the noting underlying this opinion, it will be noticed that owing to the dearth of the two ingredients mentioned above due to the war, it was proposed to amend the rules relating to the denaturation of spirits for the purpose of substituting new denaturants. Clause (a) has therefore been revised by omitting reference to light caoutchoucine and pyridine bases. Since the R.D. has certified the forms to be suitable from the administrative point of view, it is requested to verify if clause (a) as revised by the R.L.A. will be suitable from the administrative point of view.

iv) Clause (c) of condition 2 of the R.D. draft has been omitted in view of condition 3 of the R.D. draft.

(b) R.D. should see whether newly inserted clauses (d) and (iv) of condition 2 of the revised license form are necessary from the administrative point of view.

(c) Condition 10 of R.D. draft:- This condition prohibits the sale of less than 5

gallons. The last sentence of this condition however suggests that the licensee can sell five gallons and less. It is presumed that for all sales a requisition for transport is required and that no sale can be less than five gallons. The intention seems to be carried out in condition 9(b) of the revised draft. R.D. is requested to verify.

(d) Condition 11 of the revised draft:- It is presumed that Government has issued the required notification under section 12 of the Act fixing the free limit at 2 quart bottles.

(e) Most of its conditions are revised on the lines of the form of license for the whole sale sale of methyl alcohol furnished to the R.D. with R.L.A's No. 7475 dated 23rd August 1941.

6. Form D.A. 3 :- (a) This has been revised on the lines of form D.A. 2 and the form of license for the retail sale of methyl alcohol furnished to the R.D. with R.L.A's No. 7475 dated 23-8-1941.

(b) Condition 8 in the R.D. draft:- It inter alia provides that the licensee shall not sell denatured spirit to persons under 18 years of age. Section 17A of the Bombay Abkari Act, 1878, prohibits sale of any intoxicant to any person apparently under the age of fourteen years only. Consequently, it will not be legally feasible to insert a condition for prohibiting sale of spirit to persons under 18 years of age when the statute prohibits sale to persons apparently under 14 years of age only. Condition 7 in the revised draft has therefore been revised so as to accord with the provisions of section 17A.

(c) Revised condition 10: It does not appear that holders of licenses for retail sale or ordinary denatured spirt are empowered under section 6 of the Bombay Abkari Act, 187[illegible] to issue transport passes. The R.D. should therefore make the ncessary insertion in the blank space provided for in this condition.

7. D.A.4(a) : This form relates to license for the transport, possession and use of ordinary denatured spirit. No license is required under the Bombay Abkari Act, 1878, either for transport, possession or use of any intoxicant. Under section 12, a pass is necessary for transport of an intoxicant and under section 14B, a permits is necessary for possessionm thereof. No pass or permit is however required for use of any intoxicant.

As observed above, no person can transport any intoxicant exceeding the prescribed quantity except under a pass. From condition 4 of this form it will be seen that the licensee is required to remove denatured spirit under cover of a pass in form D.A. 15. It does not appear that any conditions are imposed for the transport of denatured spirit. Consequently, the form reduces itself to the possession of denatured spirit and provision regarding use can be inserted as one of the conditions of possession. Since a permit, and not license, is necessary for possession, the form has been revised accordingly. The requisite Order under section 30 in this behalf should be issued by the Commissioner

and not Government.

(b) Condition 2 has been transposed as an Explanation of the "ordinary denatured spirit".

(c) Condition 4 of the R.D. draft which provides for the removal of spirit under a transport pass only is not necessary as the permit is sought to be granted subject to the provisions of the Act and the rules and orders made thereunder. The latter half of this condition which costs a certain duty on the retail vendor is inapt in this behalf is already contained in the retail vendor's license (Vide condition 9 of D.A. 3). The condition has therefore been deleted from tthe revised draft.

(d) Condition 5 of R.D. draft provides for maintaining account in the accompanying form. The form may be prescribed by the Commissioner under section 35A(f)(vI) of the Act, separately. It has therefore been deleted from the revised form of permit. Similarly, forms in other licenses have been omitted. They may be prescribed by the Commissioner separately.

(e) Condition 8:- Attention is invited to R.L.A's No. 271 dated the 9th January 194(

(f) Condition 11 of the R.D. draft provides for cancellation of the license under section 32 and 32A of the Act. Since section 32A does not provide for suspension or cancellation of a permit, reference to section 32A has been omitted, from condition 9 of the revised draft.

(g) The other conditions have been revised on the lines of similar conditions specified in the margin of the revised draft

8. D.A. 5: (a) This form relates to the permit for possession of opium also. It is sought to be given under the provisions of the Opium Act, 1878, (Abkari Act does deal with opium; vide definition of intoxicant and intoxicating drug) and the rules and orders made thereunder. Section 5 of the Opium Act, 1878, in its application to the Province of Bombay provides that the Provincial Government may make rules consistent with the Act to permit absolutely, or subject to the payment of duty or to any other conditions the possession of opium. Rule 6(1)(ii) of the Bombay Opium Rules, 1940 made inter alia under section 5 of the Opium Act, 1878, provides that the Collector may grant to any person a special permit authorizing him, for a specified period, to have in his possession for private consumption only, a specified quanity of opium in excess of one tola in any area in the Province. In the absence of a provision in rule 6(1)(ii) analogous to rule 6(1)(i), namely, - granting of a permit subject to conditions it does not appear that nay conditions can be imposed on the permit-holder. Consequently reference to opium has been deleted from the revised draft. Under rule 6(1)(ii) as it obtains at present, a pass can be granted for a specified period for possessing opium in specified quantity in excess of one tola for personal consumption only. No other conditions can be imposed.

If it is intended to impose conditions, rule 6(1)(ii) may be amended on the lines of rule 6(1)(i) for the granting of a permit subject to specified conditions.

(b) The particulars at the beginning of this form have been relegated to the Schedule. R.D. should consider who is to fill in the particulars in the Schedule and make provision, if necessary, in the permit. It is presumed that reference to a registered medical practitioner is to one registered under the Bombay Medical Act, 1912. Items A and C(1) in the Schedule of particulars in the revised draft have been amended accordingly.

(c) Conditions 3 and 6 of the R.D. draft have been combined into condition 3 of the revised draft.

(d) Conditions 4 and 5 in the revised draft have been revised from the drafting point of view.

(e) Condition 7 of the R.D. draft provides inter alia for cancelling the permit at any time by the Collector without assigning any reasons thereefore. This provision is ultra vires inasmuch as section 32A does not authorise cancellation of a permit. Consequently, a permit can be cancelled only in accordance with the provisions of section 32 of the Act, under which no permit can be cancelled without assigning reasons. Condition 9 has therefore been inserted in the revised draft for cancellation of the permit in accordance with the provisions of section 32 of the Act.

(f) Since a permit is sought to be given subject to the provisions of the Act and the rules and orders made thereunder the first half of condition 8 in the R.D. draft is an unnecessary and has been deleted in revised draft. The latter half of condi 8 of the R.D. draft is embodied in condi

of the revised draft.

(g) Condition 10 in the R.D. draft is not a condition. It is, however, covered by the provision "and contain such particulars" in section 30 of the Act and has therefore been retained in the revised draft.

(h) The reverse of the permit, as amended, is in order.

(i) The order under section 30 of the Act in respect of the permit should be issued by the Commissioner of Excise.

9 D.A. 15:- It has been revised so as t accord with the provisions of section 13 of the Act and as revised is in order.

10. D.A. 26: This form and D.A. 5 are indentical except that the two forms differ in so far as the limit of possession is concerned. There is therefore no necessity for this form. Revised form D.A. 5 can be utilized in the prohibition areas of Bombay and Ahmedabad by filling in the blank in condition 4 of the revised form D.A. 5 according to the area in which the permit is to operate

11. D.A. 41: (a) This has been revised on the lines settled by the R.L.A., in particular condition 1 has been revised on the lines of the Hotel License form.

(b) Condition 3 and 8 of the R.D. have been combined and are embodied in condition 6 of the revised draft.

(c) It is not clear in condition 6(4) which is to be authorised the licnsee or the warehouse (or distillery); and what authority is referred to.

12. D.A. 58: (a) The preamble provides for authorizing the licenseee to sell ~~mi~~ medicated

wines etc. at the shop. For a wholesale dealer, a shop may not be the proper term for the place of business. The R.D. is therefore requested to consider and make consequential amendments for replacing the word "shop" if required.

(b) The R.D. is requested to verify if the condition 2 in the revised draft is suitable and carries out its intention.

13. D.A. 75: (a) Clause (b) of condition 2 contemplates that the licensee shall, unless exempted by the Commissioner of Excise, maintain an excise establishment of Excise Sub-Inspector and one Excise Constable. The word "maintain" means to bear expense of; to support, to keep up (see p. 767 of Iyer's Law Lexicon). The condition contemplates that a licensee may either be exempted from maintaining the said Excise establishment, or no such exemption may be given. If no exemption is granted by the Commissioner of Excise, the licensee shall have to bear the whole expense of such establishment. But clause (d) provides that the licensee shall pay the cose of establishment of such part thereof as may be ordered by the Commissioner. This clause does not appear to be consistent with clause (b) for if no exemption is granted the whole cost and not part of it, should be borne by the licensee. Clause (b) does not appear to provide for partial exemption. The words "or such part thereof" may, therefore be deleted or otherwise amended according to the intention Clauses (b) and (d) are combined together.

(b) The last portion of condition 3(ii) of R.D. draft provides that if the licensee is not prepared to give the deposit fixed by the Collector the vend fees shall be recovered before the permit is issued. This provision is inept in this condition and has therefore been omitted from condition ~~xxxxxxx~~ 3 of the revised draft. It may be given effect by issuing executive instructions.

(c) Condition 14(2) in the revised draft: Presumably the words "said warehouse refers to the licensee's warehouse. If so, then this proviso seems to be included in clause (4) of this condition. The R.D. is therefore requested to consider whether deletion of the proviso to clause (2) is no necessary.

14. D.A. Form 80 Condition 8 of the revised draft: It is for consideration whether in pursuance of R.L.A's No. 271 dated 9-1-1940, the condition should not deleted, it being one requiring the licensee to do something after the period of the license.

15. D.A. 101: ~~xxxx~~ (a) Condition 1A of the R.D in the last sentence provides for stopping the sales in certain contingency by the Collector. As pointed out in para. 3 of R.L.A's No. 7523 dated 18th September 1942, this provision is unnecessary and has therefore been deleted from ~~xx~~ the revised draft condition 2.

(b) Condition 4 of the R.D. draft corresponds to contition 4 in the revised draft. It has been revised on the lines of condition 21 of the Restaurant license. The R.D. is requested to verify if it is suitable from the administrative point of view. It prohibits sale

of liquor to all classes of followers (other than private servants). This suggests that private servants are a class of followers and wil be entitled to purchase liquor. If this is not the intention, R.D. should revise the condition to prohibit sale or serving to private servants also.

(c) Condition 12: The term" xxxiii spirit manufactured in India" does not include fermented liquors. R.D. should consider whether this is a suitable term for labelling.

16 D.A. 102: It is not clear from the provisions of the Act why it is necessary to have this form 102. There seems no provision in the Act for licensing import and removal by clubs and hotels. R.D. should consider why this form is necessary.

17. D.A. 172:- (a) Revised condition 2. It is not clear from the note to condition 2 which licenses are referred to in the note whether retail 'off' licenses or whether a license in form 172. The administrative purpose of this note is not known and it is impossible for Legal Department to say whether R.D.'s intention is carried out by the language of this note.

(b) Condition 3 of the R.D. draft inter alia provides that the licensee may import or remove from a customs frontier liquor direct under a special license etc. This provision appear to be inappropriate in this license and has therefore been omitted from condition 2 of the revised draft.

(c) For the reasons stated in R.A.A.'s No. 3320 dated the 17th April 1942, Condition 8 of the R.D. draft has been deleted from the revised draft.

(d) Condition 15 of R.D. draft:- There seems to be no presedent for this condition. Much of it is redundant. Some of the clauses do not make it clear what duty is imposed upon the club. Some of the matter is unsuitable for incorporation as a condition. It seems possible to deal with some of the ~~xx~~ occasions contemplated in this condition by cancellation under section 32A or by refusal to renew. The Condition has been omitted.

18. D.A. 173 e. - pp. 252 et seq.:-
New condition 4 is on the lines of condition 5 at p. 115 ante incorporated in D.A. 34B, and the R.D. may consider whether it is suitable from the administrative point of view.

19. All these forms have been revised on the lines already settled by the R.L.A. and therefore no separate remarks have been made in respect of each and every amendment made in the R.D. drafts. The R.D. is therefore requested carefully scrutinize the various changes made in the forms and verify if they are suitable from the administrative point of view

Sd/- P.N.M.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4615, dated 30/6/1944.

EVY. 16/7.

Office of the R.L.A.

The following condition may be substituted for the proposed condition 3, namely:-

"3. The licensees shall provide suitable rent-free quarters of a permanent nature approved by the Commissioner of Excise, Bombay, (hereinafter reffered to as "the Commissioner") or any Abkari Officer authorised by him in this behalf, for the excise staff employed under condition 2.

2. Condition 4 (a) of the licenses at page 212 and page 230 of the R.D. file No.5815/39 - IX may be amended by deleting the words and brackets "of Excise, Bombay (hereinafter called "the Commissioner"). The word "Licencees" (i.e. the plural) should be used through out the license.

Id/- P.N.M.
14/11/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8002 dated 15th November 1944.

EVY. 16/7.